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November 21, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 9, 2006

Case Number: TSO-0394

This decision concerns the eligibility of XXXX XXX XXXXXXXX (hereinafter referred to as "the Individual") to obtain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹

I. BACKGROUND

A DOE Local Security Office (LSO) conducted a background investigation of the Individual. That investigation revealed derogatory information which raised significant doubts about the Individual's eligibility for an access authorization. After further investigating this derogatory information, the LSO concluded that the Individual failed to resolve the substantial doubts about her eligibility for a DOE access authorization raised by it. Accordingly, an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning her eligibility for access authorization (the Notification Letter). The Notification Letter alleges that the Individual has

(1) Deliberately misrepresented, falsified, or omitted significant information from a . . . Questionnaire for Sensitive (or National Security) Positions, . . . a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31, 10 C.F.R. § 710.8(f) (Criterion F);

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

(2) Trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law. 10 C.F.R. §710.8(k) (Criterion K); and

(3) An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability. 10 C.F.R. § 710.8(h) (Criterion H).

The Individual filed a request for a hearing in which she made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA), who appointed me as Hearing Officer.

At the Hearing, the LSO presented one witness: the DOE Psychiatrist. The Individual testified on her own behalf and called five witnesses: a long-time friend, the director of the in-patient peer-run drug rehabilitation program from which the Individual graduated, her supervisor, her father and her live-in fiancé. *See* Transcript of Hearing, Case No. TSO-0394 (hereinafter cited as “Tr.”).

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

A. Background

On May 5, 2005, the Individual completed and submitted a Questionnaire for National Security Positions (QNSP) to the LSO for the purpose of obtaining a DOE access authorization. This QNSP appears in the Record as DOE Exhibit 6. Question 24a of that QNSP asked “Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?” DOE Exhibit 6 at 8 (emphasis in the original). The Individual answered this question “yes.” DOE Exhibit 6 at 8. The QNSP then requested the Individual to identify each illegal drug she had used, provide the dates on which she had used the illegal drug, and indicate the number of times she had used the drug. The Individual indicated that she had used two illegal drugs, heroin and cocaine: five to ten times a week from January 1, 1998 to April 2001. *Id.* As is the case with all applicants for DOE access authorizations, the LSO conducted a background investigation of the Individual.

In the course of that investigation, the LSO obtained information concerning the Individual’s illegal drug use. The Individual was arrested for possession of drug paraphernalia in October 1994. DOE Exhibit 9. At the time of this arrest, the Individual was 14 years old. During the background investigation, the Individual apparently told LSO officials that the paraphernalia, a spoon used to heat and liquefy heroin, was not hers, but rather was placed in her handbag by an acquaintance. DOE Exhibit 9. As a result of this arrest, she was placed in a school for juvenile offenders.

The Individual informed LSO officials that she began her illegal drug use in 1998. She claimed to have become addicted to heroin and cocaine in 2000 or 2001. In April 2001, the Individual entered a detoxification facility in order to physically withdraw from heroin and cocaine use. Two weeks later, after completing detoxification, the Individual entered into a nationally recognized re-education program for individuals with severe long-term substance abuse issues (the Re-education Program). While the Individual indicated in her QNSP that her heroin and cocaine use occurred over a three-and-a-half year period, records from the Re-education Program indicate that the Individual’s heroin use occurred over a five-year period. DOE Exhibit 9. Moreover, the Re-education Program’s records indicate that the Individual’s recreational drug use also included percocet and valium. DOE Exhibit 9.

Because the information it obtained during the background investigation of the Individual raised serious security concerns, the LSO requested that the Individual participate in a Personnel Security Interview (PSI). That PSI was conducted on December 6, 2005. The transcript of the December 6, 2005 PSI appears in the Record as DOE Exhibit 5. During that PSI, the Individual denied that she was using heroin at the time of the 1994 arrest. DOE Exhibit 5 at 37. As a result of the 1994 arrest, the Individual was placed in a residential juvenile rehabilitation facility (the Juvenile Rehabilitation Facility). DOE Exhibit 5 at 38. The Individual indicated that she had been placed in the Juvenile Rehabilitation Facility because her father “. . . felt that [she] had a

drug problem at that time. . . .” DOE Exhibit 5 at 39. The Individual remained in the Juvenile Rehabilitation Facility and a related half-way house for approximately two years. DOE Exhibit 5 at 41-42. In 1998, two years after leaving the half-way house, the Individual began dating a heroin user. DOE Exhibit 5 at 44. The Individual claimed that she was unaware of her boyfriend’s heroin use when she began dating him. DOE Exhibit 5 at 55. The Individual indicated that she eventually became addicted to heroin and cocaine, which she was using five to ten times a week. DOE Exhibit 5 at 70.

Because the PSI did not resolve the security concerns arising from the Individual’s drug use, the Individual agreed to undergo a forensic psychiatric examination. This forensic psychiatric examination (the Examination) was conducted by a DOE consultant psychiatrist (the Psychiatrist) on February 10, 2006.

During the Examination, the Individual initially informed the Psychiatrist that her last use of illegal drugs occurred in March 2001. DOE Exhibit 3 at 11. Subsequently, the Individual was informed by the Psychiatrist that he might administer a hair test to her which would detect any illegal drug use in the past five years. The Individual was then asked if she had any relapses in the past five years. She answered “Yes. April or May two years ago.” DOE Exhibit 3 at 11. The Individual explained that she had snorted cocaine in April or May of 2004. DOE Exhibit 3 at 11. The Individual further admitted to the DOE Psychiatrist that she had informed the LSO that her last illegal drug use had occurred in 2001. DOE Exhibit 3 at 12. The Individual also informed the Psychiatrist that she still occasionally used alcohol. The Individual initially told the Psychiatrist that her maximum use of heroin was once a day. DOE Exhibit 3 at 13. Later on in the examination, after being challenged by the Psychiatrist, she admitted that her maximum use of heroin was two to three times a day. DOE Exhibit 3 at 13. The Individual also informed the Psychiatrist that she occasionally abused percocet and valium, although she obtained these drugs legally. DOE Exhibit 3 at 14. The Individual informed the Psychiatrist that she started the Re-Education Program on April 8, 2001 and had graduated from it on April 8, 2003. DOE Exhibit 3 at 15.

On February 12, 2006, the Psychiatrist issued his report of examination (the Psychiatrist’s Report). In this report, the Psychiatrist indicates that, in his medical opinion, the Individual meets the criteria for Substance Dependence, Heroin, set forth in the American Psychiatric Association’s Diagnostic and Statistical Manual, Fourth Edition Text Revision (DSM-IV TR). DOE Exhibit 3 at 17. The Psychiatrist further opined that the Individual was not “showing ‘adequate’ evidence of rehabilitation or reformation.” DOE Exhibit 3 at 18.

B. Criterion F

The Statement of Charges indicates that the Individual intentionally provided false information to the LSO when she falsely stated in her QNSP that her most recent use of illegal drugs occurred in 2001 when her last use of illegal drugs had actually occurred in 2004. The Individual does not contest this charge.

Intentionally providing false information in a QNSP raises significant security concerns under

Criterion F. False statements by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See e.g., Personnel Security Hearing, Case No. VSO-0281*, 27 DOE ¶ 82,821 at 85,915 (1999), *affirmed*, 27 DOE ¶ 83,030 (2000) (case terminated by OSA, 2000); *Personnel Security Hearing, Case No. VSO-0013*, 25 DOE ¶ 82,752 at 85,515 (1995), *affirmed* (OSA, 1995).

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing, Case No. VSO-0244*, 27 DOE ¶ 82,797, *affirmed* (OSA, 1999); *Personnel Security Hearing, Case No. VSO-0154*, 26 DOE ¶ 82,794 (1997), *affirmed*, *Personnel Security Review, Case No. VSA-0154*, 27 DOE ¶ 83,008, *affirmed* (OSA, 1998). In the end, like all OHA Hearing Officers, I must exercise my common sense judgment in determining whether an individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, I must consider whether the Individual has submitted sufficient evidence of mitigation to resolve the security concerns raised by her failure to honestly disclose her illegal drug use.

In a number of decisions, OHA Hearing Officers have considered the implications of falsifications. The factors considered in these cases include the following: whether the individual came forward voluntarily to renounce her falsifications, *compare Personnel Security Hearing, Case No. VSO-0037*, 25 DOE ¶ 82,778 (1995), *affirmed* (OSA, 1996) (voluntary disclosure by the individual), *with Personnel Security Hearing, Case No. VSO-0327*, 28 DOE ¶ 83,005 (2000), *affirmed* (OSA 2000) (falsification discovered by DOE security); the length of time the falsehood was maintained; whether a pattern of falsification is evident; and the amount of time that has transpired since the individual's admission. *See Personnel Security Hearing, Case No. VSO-0327* (2000), *affirmed* (OSA, 2000).

Turning to the present case, I note that the Individual revealed her falsification. This factor weighs in her favor. However, as discussed above, her revelation of her falsification occurred as a response to the Psychiatrist's suggestion that he might have her tested for drug usage. That fact weakens the mitigation provided by the Individual's admission.

The Individual maintained the falsehood from May 5, 2005, until February 10, 2006, a period of about nine months. This is a relatively short period of time, which weighs slightly in her favor.

Unfortunately for the Individual, there appears in the Record a pattern of discrepancies in the information the Individual has provided LSO Officials during the present proceeding. Specifically, the Individual has, in the course of this proceeding, indicated that: her heroin use was confined to a three and a half year period when other information in the Record indicates that it occurred over a five year period, her drug use was confined to heroin and cocaine, when in fact it included marijuana, percocet and valium as well and her initial claim that she was using heroin and cocaine from five to ten times a week when, as she later admitted, she was actually

using those drug from 14 to 21 times a week.

More importantly, the Individual has furnished conflicting reasons for obtaining counseling in March 2005. The Individual's QNSP indicates that she sought counseling. Case analysis notes, which appear in the Record as DOE Exhibit 9, indicate that the Individual informed LSO officials that she had obtained counseling at this time because she was becoming stressed about family issues. DOE Exhibit DOE Exhibit 9 states: "Subject felt responsible for her mother's care, however, she was not getting any assistance [from] other family members, so the stresses built up." DOE Exhibit 9 at 3. However, the Psychiatrist's Report indicates that she informed him that she sought counseling at this time because she had discovered that her fiancé had been having an affair. DOE Exhibit 3 at 10 n.18, 13. Moreover, during her psychiatric examination, the Individual provided conflicting accounts of her relapse to the Psychiatrist. DOE Exhibit 3 at 12 n. 20, 13 n. 28.

In addition, the Individual's last provision of false or misleading information occurred relatively recently, on May 5, 2005.² These factors weigh heavily against a finding that the Individual has mitigated the security concerns raised by his provision of false or misleading information to the LSO.

Our previous cases have stated that a subsequent pattern of responsible behavior is of vital importance to mitigating security concerns arising from irresponsible behavior. *See Personnel Security Hearing, Case No. VSO-0499*, 28 DOE ¶ 82,850 (2002). In most cases in which hearing officers have concluded that doubts about an individual's judgment and reliability raised by evidence of falsification have been resolved, a substantial period of time has passed since the falsification. In these cases, the time period has allowed individuals to establish a pattern of responsible behavior. In those cases where an individual was unable to establish a sustained period of responsible behavior, hearing officers have generally determined that the individual was not eligible to hold an access authorization. *See Personnel Security Hearing, Case No. VSO-0448*, 28 DOE ¶ 82,816 (2001) (11 months not sufficient to mitigate four year period of deception); *Personnel Security Hearing, Case No. VSO-0327*, 27 DOE ¶ 82,844 (2000) (less than one year of truthfulness insufficient to overcome long history of misstating professional credentials); *Personnel Security Hearing, Case No. VSO-0289*, 27 DOE ¶ 82,823 (1999) (19 months since last falsification not sufficient evidence of reformation). In the present case, the Individual has established a pattern of responsible behavior dating back to February 10, 2006.

Accordingly, the Individual has established a six-month-long pattern of responsible behavior at the time of the hearing. As the cases cited above indicate, a six-month-long pattern of responsible behavior would be insufficient to mitigate a nine-month long-period of deception.

The Individual has attempted to mitigate this nine-month pattern of deception by submitting evidence showing that she is an excellent employee, daughter, friend and fiancé. In addition, the

² Using the May 5, 2005 PSI as the starting date for a period of responsible behavior might be unduly charitable. As the discussion above indicates, the Individual continued to withhold the truth about her motivation for seeking counseling until her February 10, 2006 Psychiatric examination.

Individual presented compelling testimony at the Hearing attesting to her present character. Her fiancé testified that the Individual progressed rapidly in the Re-education program. Tr. at 7. In fact, the Individual progressed to the point where she assumed a leadership role within the Re-education Program. Tr. at 7. The Individual's fiancé testified that she is "honest, open, hardworking and determined." Tr. at 10. The Re-education Program's Director testified that the Individual's character is strong. Tr. at 26. The Re-education Program's Director further testified that the Individual is trustworthy: noting that the Individual was entrusted with working in the accounting department and as a cashier. Tr. at 27. The Individual's father testified that she now is a trustworthy person. Tr. at 49, 51. The Individual's supervisor testified that she is an excellent, dependable and honest employee. Tr. at 55-56, 62. The Individual's long-term friend testified that the Individual is a very honest person. Tr. at 80-81. The Individual testified that she had been given the responsibility for collecting, transporting and depositing the proceeds, totaling approximately half a million dollars, of a business conducted by the Re-education Program. Tr. at 64-65.

While this evidence creates a highly favorable impression of the Individual, it cannot resolve the serious security concerns raised by her recent repeated provision of false information to LSO officials. Accordingly, the security concerns associated with the Individual's falsification remain unresolved.

B. Criteria K and H

As the preceding discussion shows, the Individual has admitted to using marijuana, cocaine, percocet, valium and heroin illegally. Accordingly, the information in the Record provides a sound basis to invoke Criterion K. Illegal drug use evidences an unacceptable and disturbing disregard for laws prohibiting their use. Such disregard for the law raises concerns that the Individual may similarly disregard other laws, including those which protect classified information and special nuclear materials. *See Personnel Security Hearing, Case No. VSO-0116*, 26 DOE ¶ 82,765 at 85,602 (1997), *citing Personnel Security Hearing, Case No. VSO-0013*, 25 DOE ¶ 82,752 at 85,512 (1995)). Moreover, the use of illegal drugs, and the disregard for law and authority that such use suggests, indicate a serious lapse in judgment and maturity. Involvement with illegal drugs may also render the user susceptible to blackmail or coercion.

The Psychiatrist's Report indicates that the Psychiatrist found that the Individual met the DSM-IV TR's criteria for Substance Dependence, Heroin with Physiological Dependence in Sustained Full Remission. DOE Exhibit 3 at 17. The Individual does not dispute this diagnosis.

Even though at the time he issued the Report, the Psychiatrist found that the Individual's Substance Dependence was in sustained full remission, he was of the opinion that she was not reformed or rehabilitated. DOE Exhibit 3 at 18. Specifically, the Psychiatrist's Report states,

The [Individual] is heroin dependent and has been using another habit forming substance, alcohol, for the past year, albeit infrequently and by her self-report, not to the point of intoxication. . . . In order for me to opine that she is showing adequate evidence of rehabilitation or reformation, she needs to be completely

free of the use of any potentially habit forming substance, including alcohol, for a period of one year.

DOE Exhibit 3 at 18. A reliable diagnosis of Substance Dependence raises significant security concerns under Criteria K and H. *See, e.g., Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, 25 DOE ¶ 82,755 (1995) (affirmed by OSA, 1995). In these proceedings, Hearing Officers have found that an individual afflicted with substance dependence might suffer from impaired judgment and reliability and a decreased ability to control impulses. These factors amplify the risk that an individual will fail to safeguard classified matter or special nuclear material.

By all accounts, the Individual has turned her life around and presents a remarkable success story. The Record shows that, in April 2001, the Individual self-enrolled in a nationally recognized in-patient peer-run drug rehabilitation program (the Re-education Program). Tr. at 68. The Individual successfully graduated from the Re-education Program in April 2003.

At the Hearing, the Individual's fiancé, who lives with her, testified that she has remained drug-free for the five years he has known her. Tr. at 5, 17. The Fiancé testified that the Individual earned several positions of responsibility among her peers at the Re-education Program and ultimately graduated from the program. Tr. at 8. The Fiancé, who is also a graduate of the Re-education Program, further testified that he believes that the Individual is fully rehabilitated from her Substance Dependence. Tr. at 10-11. The Fiancé testified that he would be surprised if the Individual were to use illegal drugs again.

The Director of the Re-education Program (the Director) testified on the Individual's behalf. The Director testified that he has known the Individual since she started the Re-education Program in 2001. Tr. at 22. The Director testified that the Individual graduated from the Re-education Program. Tr. at 10, 16. He further testified that the Individual was rehabilitated. Tr. at 27.

The Individual testified that her last use of illegal drugs was the relapse incident discussed above which had occurred two years earlier. Tr. at 77. Most importantly, the Individual testified that she is no longer using alcohol. Tr. at 67, 73. Her last drink was New Year's Eve at the very end of 2005. Tr. at 83. The Individual now attends Al-Anon meetings with her father. Tr. at 67. The Fiancé testified that they had made the mutual decision to abstain from using alcohol after the Individual's meeting with the Psychiatrist, at which she was informed that using alcohol might prevent her from obtaining a DOE access authorization. Tr. at 12.

At the Hearing, the Psychiatrist was present for all of the other witnesses' testimony. After all of the other witnesses had testified, the Psychiatrist testified. The Psychiatrist testified that the Individual was now showing adequate evidence of rehabilitation and reformation of her Substance Dependence. Tr. at 85. The Psychiatrist testified that her relapse in 2004 does not prevent him from concluding that she is reformed or rehabilitated. Tr. at 85. The Psychiatrist

further testified that the Individual's continuing alcohol use was the only reason he that he had previously concluded that the Individual had not shown adequate evidence of reformation or rehabilitation. Tr. at 85.

For these reasons, I am convinced that the Individual no longer uses illegal drugs and is unlikely to resume their use in the future. Moreover, I find that the Individual has been reformed and rehabilitated from her Substance Dependence. Accordingly, the security concerns raised by the Individual's illegal drug use and Substance Dependence have been sufficiently mitigated.

IV. CONCLUSION

This is the closest of cases. I am highly impressed with the Individual and the remarkable changes she has made in her life. In making this turnaround she has exhibited strength of character which is highly admirable and which reflects positively on her ability to handle the responsibility of possessing a DOE Access Authorization. However, the Individual's fairly recent falsification and provision of conflicting information to LSO officials has raised some unresolved doubts about her eligibility to possess a DOE Access Authorization.

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criterion K and H. However, the Individual has not resolved the security concerns raised under Criterion F. Therefore, the Individual has not demonstrated that granting her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my decision that the Individual's access authorization should not be granted. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: November 21, 2006